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RULES AMENDMENT (a majority must be present)

RESOLVED:

The Rules are hereby amended, by adding a new section 13.11 to provide as follows:

13.11 Members who desire access to restricted (including classified and confidential) or sensitive information that has in addition been designated by the Chairman as primary information, shall be required to request such access in writing to the Committee. Each such request by a Member must be considered by the Committee, a majority being present, at the earliest opportunity. The Committee may, by record vote, grant the Member's request. If the Member's request is not granted, the Committee shall forward the Member's request, together with a recommendation and report of the Committee, to the House. If the Committee did not grant the Member's request, the Member shall have access to the primary information only subsequent to a determination by the House that the Member's request should be granted.

Full Committee Exhibit #16

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EXECUTIVE-SESS-ION-

CONSIDERATION OF AN AMENDMENT TO THE RULES
OF THE SELECT COMMITTEE ON ASSASSINATIONS

THURSDAY, APRIL A, 1978

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4.S. House of Representatives,

Select Committee on

Assassinations, D.C.D

Washington, D.C.D

The committee met, pursuant to notice at 4 2000 p.m., in room 304 of the Cannon House Office Building, Hon. Louis Stokes, (chairman of the committee), presiding.

Present: Representatives Stokes (presiding), Preyer, Fauntroy, Dodd, Ford, Fithian, Edgar, Devine and Sawyer.

Present also: G. Robert Blakey, Chief Counsel and Director; Gary Cornwell, Deputy Chief Counsel; I. C. Mathews, Special Counsel; William Cross, Security Officer; Elizabeth Berning, Chief Clerk; and Marion Wills, Deputy Chief Clerk.

Chairman Stokes. A quorum of the committee being present at this time, the committee is called to order. I recognize Mr. Blakey for a statement with reference to this.

Mr. Blakey. There are several matters that could be brought up. One of them, I suppose, technically should be considered in public session about the deals with the change

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in the rules. Nevertheless, the reasons for the change in the rules goes to the heart of the nature of our current investigation and consequently, I think it would be appropriate for a motion to be made to close the meeting.

The chair will entertain such a motion Mr. Fauntroy. I so move.

Chairman Stokes. It is moved that the meeting go into executive session. The clerk will call the roll.

Mrs. Berning. Mr. Stokes.

Chairman Stokes. Aye.

Mæs. Berning. Mr. Devine.

Mr. Devine. Aye.

Mrs. Berning. Mr. Preyer.

Mr. Preyer. Aye.

Mas. Berning. Mr. McKinney.

There was No response]

Mrs. Berning. Mr. Fauntroy.

Mr. Fauntroy. Aye.

Mrs. Berning. Mrs. Burke.

There was No response.

Mæs. Berning. Mr. Sawyer'.

Mr. Sawyer. Aye.

Mes. Berning. Mr. Dodd.

Mr. Dodd. Aye.

Mrs. Berning. Mr. Ford.

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Mr. Ford. Aye.

Mgs. Berning. Mr. Fithian.

Mr. Fithian. Aye.

Mes. Berning. Mr. Edgar.

Mr. Edgar. Aye.

Mes. Berning. There are nine ayes, Mr. Chairman.

Chairman Stokes. Nine members having voted in the affirmative, this meeting is now declared in executive session and all members of the public are asked to excuse themselves from the room.

Mr. Blakey. Let me see if I can present the problem to you as succinctly as I can, although perhaps I should begin with an apology to the committee for bringing about a meeting of the full committee on such short notice.

Obviously, there has been a recess and some of the membership has been gone for the last week and this is really the first opportunity that we have had.

The problem has come up during the recess in our efforts to work with the Central Intelligence Agency in preparing The problem really goes as follows: In the central case study is the Mexico City issue. The Agency has given us complete access to everything in this area and this includes the nature of the surveillance that the Agency had of the Russian and Cuban Embassies.

They had photographic and electronic surveillance of both

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places. This covered the crucial periods of time, more or less, and that is a big question, more or less. And I now have to say that the person alleged to have been Oswald went in the embassy.

Nevertheless, the Agency never came up with a photograph of Oswald coming in and out of the Agency. Indeed they sent back up to Washington the wrong photograph. This has given rise to the whole problem of the mysterious plan.

The significance of the issue of the investigation literally speaks for itself. If Oswald did not go in and apply for that visa, and someone else did, then it is obvious that Oswald had an associate. If he had an associate, the single assassin theory is in real serious trouble.

What we need to do is to pursue in our hearings for your benefit our ability to understand what went on down in Mexico. We have witnesses scheduled for the hearings and we now asked the Central Intelligence Agency to make available to us those materials dealing with the surveillance, which are Hill-sensitive and they go right to the heart of sensitive sources and methods. But the Agency prefers not to disclose them.

Now, they have no objection to the staff looking at them and they frankly have no objection to this committee looking at them and they have no objection to us, at least in dealing with Agency employees, using or pursuing these matters in the hearings, but then they say to us the following: "But what do



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you do about Kule 11?"

Rule 11 of the House says that all committee documents are property of the House and as such all members of the House have access to them. We say, well, our response to them is as follows: "What do you want me to do about the rules of the House of Representatives? I cannot change them."

And their response is: "Well, why don't you adopt, meaning the committee adopt, a rule that looks like the House Intelligence Committee's rule on member access?"

So, we looked at that very carefully and the rule of the House Intelligence Committee provides roughly as follows:

Members can have access to documents in the posession of the House Intelligence Committee under terms and conditions set forth by the House Intelligence Committee up to and including denial of access. That is, we can set out the exact language for you but the House Intelligence Committee's rule explicitly authorizes the House Intelligence Committee to deny access to a member.

And I said, or our response to the Agency is as follows:
"You cannot seriously expect me to suggest to my committee the adoption of a rule that is on its face inconsistent with Kule ll, can you?"

And they said, "Yes, we know that it is inconsistent but if you give us at least as much protection as the House have Intelligence Committee gives us, we would have no problem with



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turning it over to you."

 \mathscr{N}_{My} response is that "I cannot do that."

I cannot suggest to this committee that you adopt a rule that is on its face inconsistent with Kule 11. The House Kule, after a'11 1 am talking as a lawyer, your lawyer I guess 1 the rules of the House are explicit. The rules of this committee are explicit. The resolution of this committee explicitly says that your rules must be consistent with the rules of the House.

So, I cannot suggest to you a rule like that rule of the House Intelligence Committee.

I played around with language with Jim Wolfe and we came up with the following suggestion that may meet the needs of the Central Intelligence Agency. The rule does not deny access to any member but it conditions that access to the time, place and manner by the following procedure: That a member would have to request access in writing and the request would be taken up by the full committee and, if the full committee voted to give the member access, he would get it then and there and, if the committee decided that under the circumstances the committee member or the members should not have access, it would cause the question to be taken back up on the House Floor.

Of course, if the House floor in effect reaffirms rule li in this case, then our rules would permit the member to have



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access. If the House floor says that the members should not have access, then of course it would be the resolution of the floor that would deny the member access and not our own rules.

House of Representatives to take a second look at the scope and impact of Rule 11, not as an abstract question of principle, but as a concrete instance where if what the member wanted access to was something that could be fairly described as the "family jewels," then it would be the burden of the full committee to say that it is too risky to turn over this material to this member.

It would then provide a mechanism for transferring that decision to the full House floor and the full House floor would then be in a posture of debating the issue in the concrete context, that is, the specific request of a specific member to see a specific document, and you could bring to the attention of the House the nature of that document without actually revealing it.

If, of course, the House votes to reaffirm rule 11 in this instance, access would be granted. It is my judgment that the Agency would buy this rule as giving them the maximum protection of the disclosure, or the routine and automatic disclosure of the more sensitive methods, to 435 people simply on request.

The choices are hard. If we do not adopt it, I think the

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Agency simply will not permit us to explore sensitive sources and methods like the Mexico issue in our hearings and the only way we will get the information out of the Agency is by a very sensitive declassification process in the Agency first. We need to have the information over here to work with it.

If we bring it over here to work with it and cannot give them some protection in the context of rule 11, they will not give it to us. That is the dilemma you are in.

I am prepared to discuss with you the exact language of rule 11 and the exact language of the Intelligence Committee's rule, and Mrs. Berning has for you the text of the rule change.

Mr. Sawyer. Would it be feasible to enter into an agreement with the Agency that gave them the right to recall at any time, they want the documents covered by the agreement, so if they were advised that there was now a request to review them, we would get a binding agreement and give it back to them?

Mr. Blakey. We discussed that with them and the kind of feeling that they had, and that we had, was that once they give us the documents to work with over here, including our own transcripts $\frac{1}{H}$ in other words, if we have a closed order examination of an Agency employee over what was going on in Mexico, it is hard to argue that our transcript of that hearing is a document that they gave to us and they can



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recall. And I think we just have to bite the bullet and say that once we put it in our hearings, it is ours.

Then Rule 11 is explicit that what is ours belongs to the House and that is every member of the House.

We tried that, Mr. Sawyer.

Mr. Sawyer. I just threw it out.

Mr. Fithian. Well, then, Eob, what you are saying is that if we get a document that shows some very, very sensitive aspects of surveillance and we make that a part of our record, when we get ready to fold up shop, in our records is this document where we require the maximum security, and the inability then of the Assassination Committee to make available to the public our record falls seriously into question first.

Mr. Blakey. I think that is true. There are certain things, and in other words when we are dealing with what happened in the assassination, everything cannot be made public. If we begin dealing with the way in which certain things were learned, I think we have to recognize that that probably, unless we can convince the Executive Department to in effect declassify it, it will not come out.

Mr. Fithian. It will not what?

Mr. Blakey. It will not be made public.

Mr. Fithian. What physically happens to it then?

Mr. Blakey. Well, it would be part of our record and it



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will be in effect classified in our records and our records will probably be turned over to $\frac{1}{M}$ I suspect the best repository would be the House Intelligence Committee.

For example, the Agency had a surveillance on the Russian Embassy, that is a wire tap, and the physical surveilance, a photographing surveillance, a sensitive surveillance to the highest degree, and it poses potential problems for the existing Mexican Government.

Mr. Fithian. I am in full support of the proposition and I want to see, once you go back to Cornell and we go back to our committees, what actually happens to that?

Mr. Blakey. Those documents will go to the Intelligence Committee who will look them up like the other documents that they have. The other answer is, to the degree that a question comes up, who was the person who applied for the visa application in Mexico City, and can we believe what the Agency tells us, which calls immediately into question the nature of their surveillance, the wire taps and the photographs and as we can talk in a minute about what came out in Cuba.

The Cuban Government has provided to us as a witness the man who filled out the visa application.

Mr. Devine. Those are free from the Freedom of Information Act, and they are in the custody of the Intelligence Committee?

Mr. Blakey. Because it is in the possession of Congress



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which is exempted from that. The witness given to us in Mexico, who was in Mexico at the time, says that his memory is that the person who filled out the application was not the same person who Jack Ruby shot in Dallas.

Mow, there is a lot of corroboration that we have to do and verification of that, and he gave it as his best memory and "I am not saying this is what happened, but it is my memory of what happened; the person who dealt with me is not the person that I remember," and the ages were different and the weights were different and the heights were different and the facial shape was different.

Oswald and one which was not, there were two people for a conspiracy.

whatever else we have seriously undermined, if we believe that testimony we have undermined the single assassin theory. So, it is right at the heart of what we have to do now, to get access and be able to use the photographs the Agency took of the people who walked in and out of the building.

For us to get it, they have to either declassify it or they have to give it to us in such a way that they are reasonably assured that some exercise of discretion will be made before every member of the House gets immediate access to it.

Mr. Fauntroy. I have two questions. It is my



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understanding that CIA is willing to risk a Floor procedure?

Mr. Blakey. Yes.

Mr. Fauntroy. My second question, therefore, is: How do you distinguish the House Intelligence Committee and its rules from that of our Select Committee?

Mr. Blakey. Well, I think the House Intelligence

Committee rule is in opposition to Rule 11. They have adopted a rule in contradiction to the Rules of the House. As a lawyer, I say that and I cannot suggest to you that you adopt their rule. Their rule explicitly says that the House Intelligence Committee can deny you access to a document in their possession.

Rule 11 of the House says that if it is in possession, they can condition your access, time place and manner but this cannot deny it.

Mr. Fauntroy. My only concern, Mr. Chairman, therefore is that we get access. Now, if we can get access through this means, that is fine. but if we cannot, if the House Intelligence Committee can do it, for the sake of our mandate, I have no objection to adopting their rule.

Mr. Sawyer. That is the way I feel about it, too.

Chairman Stokes. Do we have a copy of the House Intelligence Committee Rule?

Mr. Fithian. May I come in here? I am not the careful stickler on this, Mr. Blakey, but it would seem to me that we

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might be able to adopt a rule just simply saying that in the handling and for security purposes in the handling of documents from the Intelligence Committee, they shall be handled in accordance with the Intelligence Committee rules for the House of Representatives.

Of course, then you go and read that and you Mr. Blakey. go to Rule 11 and Rule 11 controls the detail.

Mr. Dodd. Could I ask one question there? concerned about really one aspect of this. I would like to see us do whatever can be done to gain access immediately to this information. My real concern comes here, that all of us here have made a pledge that at the conclusion of these hearings next year, that we would make public all and any information that helped us arrive at the results we have. And that information would be available to the public.

I am torn, myself, over the desire to get at this, and then faced with the dilemma of having to renege on a commitment that we felt was important. I do not think we anticipated this kind of a thing facing us, and that is my principal concern at that particular juncture.

The issue arises like this. The process Mr. Blakey. that we have been going through is a two-step process. First it is access and second it is disclosure. When it comes time to write the final report, suppose we wanted to tell the American people about Oswald in Mexico, and the only way to do



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we have been right up front with the Agency and to say from guys may have to bite the bullet when we get down to the end, the nature of the surveillance goes to the heart of the information and we cannot make a conclusion without indicating the heart of the information, and at that time we will make the appropriate request of you for not access but disclosure.

And the Agency says, "Well, we recognize that problem and we will see if we cannot develop words that let us disclose enough in the final report to protect our sensitive sources and methods."

Mr. <u>Dodd</u>. What you are telling me is that we are not being asked at this juncture to make a commitment as to what ultimately we will do with the information at the time we make the final report.

Mr. Blakey. Yes; the agreement reserves all constitutional rights to both sides at the final stage. With the Agency, that is disclosure. The only question now is access.

If we need it to tell the American people, I think we fight for disclosure.

Chairman Stokes. Having read the Intelligence

Committee's provision, you are lucky if CIA is willing to take
this provision here that you have drafted, because this is not
anywhere near as stringent as the one of the Intelligence



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Mr. Blakey. The Intelligence Committee actually says, and I am reading now from subparagraph 2, when it says, "Such action as the committee may take including but not limited to approving the request in whole or in part or denying the request."

How can the House Intelligence Committee deny the request when you have rule 11 which is explicit and it says and I quote now from rule 11. "All members of the House shall have access thereto." It is explicit.

Our resolution says our rules have to be consistent with the rules of the House and the rules of the House do not leave any if's and's or but's. But the requested rule is that it brings into operation the Ploor of the House prior to the members access and thus they will take their chances on the Floor of the House denying a member access, if we think it is worth fighting over.

Mr. Fauntroy. And your fear is that were we to operate under this rule that we would run the risk of being overruled by the House and there we would have to give it.

Mr. Blakey. But the Agency says they are willing to risk a floor confrontation over an individual access and if they lose that, they lose. But they are unwilling to run the risk of having the decision automatically flow from the rule of the House itself.



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Mr. Preyer. You do not want to release it because the man's conscience tells him that this should be made available to the public. I think at least they have a crack at that public opinion mob elicited by them.

Mr. Blakey. And I would say in a routine matter that the rule ought to be absolutely construed in favor of a member's access.

There is very little over there now that could not be turned over to every single member of the House, if he was adequately briefed before hand, but the deeper we get into some of this, the more sensitive it becomes and the more it is depending on who makes the request and what he announces before he makes the request, which you might want to reconsider.

Mr. Preyer. When he makes the request to the committee, we would have the right to impose conditions on access at that time?

Mr. Blakey. Our rules now provide a very stringent situation, only he, and only written, and only in a designated room and no notes taken, and of course subsequent disclosure is a violation unless he does it with your majority opinion.

In other words, he cannot come in and look at something and then disclose it against the will of the full committee publically and all he can get is access to it. But I think that they have a fear that the ethical violation by a member



of not living up to your majority rule might not be a sufficient deterrent to the disclosure.

Chairman Stokes. I have a question and maybe Jim Wolfer is the proper person to answer the question, but each time we amend the rules, do we then again republish our rules?

Mr. Wolfe. All we have to do is add an amendment to the end, and we now have our pamphlet with one glued amendment on it and we will have to glue the new amendment on at the end and we will not have to republish them.

Chairman Stokes. Also previously and I do not know whether it is required by the House Rules or not but we did put our rules into the Congressional Record, and are amendments required?

Mr. Wolfe. Not necessarily. I do not think we are necessarily required, and they are public in the sense that every person who gets a copy of our rules will get a copy of this provision with it.

Chairman Stokes. What about House members?

Mr. Wolfe. If the House member wants access, it has not happened yet, but they have asked us sometimes on the phone how to do it, and we would send them a copy of the rules and the rule dealing with access would be at the end. In the same way the Intelligence Committee's rules are public, our rules obviously would be public.

Chairman Stokes. Are there any further questions? If

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not, the chair will entertain a motion.

Mr. Preyer. I move the adoption of this rule amendment, Mr. Chairman.

Chairman Stokes. It has been properly moved that the rules of the committee be amended as per the rules amendment now before the members. The amendment is as follows:

including classified and confidential, or sensitive information that has in addition been designated by the chairman as primary information, shall be required to request such access in writing to the committee. Each such request by a member must be considered by the committee, a majority being present, at the earliest opportunity.

request. If the member's request is not granted, the committee shall forward the member's request, together with a recommendation and report of the committee, to the House. If the committee did not grant the member's request, the member shall have access to the primary information only subsequent to a determination by the House that the member's request should be granted.

Mrs. Berning. Mr. Stokes.

Chairman Stokes. Aye.

Mrs. Berning. Mr. Devine.

Mr. Devine. Aye.



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9 Mrs. Berning. Mr. Preyer. Mr. Preyer. Aye.

Mrs. Berning. Mr. McKinney.

Chairman Stokes. Aye by proxy.

Mrs. Berning. Mr. Fauntroy.

Mr. Fauntroy. Aye.

Mrs. Berning. Mr. Thone.

*There was No response.]

Mrs. Berning. Mrs. Burke.

(There was No response.]

Mfs. Berning. Mr. Dodd.

Chairman Stokes. Aye by proxy.

Mrs. Berning. Mr. Ford.

Mr. Ford. Aye.

Mrs. Berning. Mr. Fithian.

Mr. Fithian. Aye.

Mrs. Berning. Mr. Edgar.

Mr. Edgar. Aye.

Mrs. Berning. There are ten "ayes," Mr. Chairman.

Chairman Stokes. Ten members having voted in the affirmative, the rules amendment is adopted.

There is one other matter which it may be Mr. Blakey. appropriate to raise, particularly while everybody is here. It is a very sensitive matter, and we ought to get some feel from it.



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You will recall while we were in Cuba, Mr. Chairman, we discussed on the beach one issue and this deals with an issue that is important. The Central Intelligence Agency suggested the only way we could have conversations in private was to stand on the beach and face the United States, that is out to the ocean.

So, at certain times we went to the beach and faced the ocean to have conversations.

Chairman Stokes. I am glad that you clarified that. You can get the wrong impression.

Mr. Fauntroy. I was about to become very disgusted with that and the rested look that you had when you returned.

Mr. Blakey. The tan covers the bags under my eyes.

Chairman Stokes. While he was watching the United

States, we saw the latest maneuvers of the latest MIG fighter

200 yards off the beach.

Mr. Blakey. It was 200 yards.

Chairman Stokes. It was some display of its agility.

Mr. Edgar. Did they know you were there?

Chairman Stokes. Yes.

Mr. Blakey. The issue raises as follows: Our rules are explicit for no electronic surveillance and by that I mean not even the wire tapping which is obviously beyond the pale, but no central recording either.

As all of you now know, there are two informants in the



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 \mathscr{H} Mr. Blakey. The Supreme Court has decided a case on this and they have set up the rules that should be followed in this kind of a situation and it would be possible for us to follow those rules and not invade the attorney-client privilege.

Chairman Stokes. I was aware of that general principle.

Mr. Edgar. Given the information that we have so far, I think we ought to put this in our thinking and think about it very seriously before we get involved in any kind of action at this point. So, I would suggest the we mall it over in our minds and keep it within the committee structure and deal with it at some future time, because I think that there are some very, very serious questions.

Mr. Blakey. They are extremely serious, no matter what decision you take.

Mr. Edgar. If I would have an opportunity to vote now, I would vote "no."

Whatever decision you make you run risks and Mr. Blakey. it is not something take has to be decided today, but it is something that has to be decided next week.

I think the gentleman is absolutely Chairman Stokes. right, that this is something that the committee needs to think about, and have further dialogue with one another on, and then we can entertain it at some later date.

Before we adjourn, I would like to reiterate Mr. Edgar. a comment I made to you, that it seems to me it would be



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helpful in the next week or two to have at least an hour meeting of our committee to bring together all of us to get a summary report of where we are in terms of status with each of the investigations, the foreign contacts, the process of where we are going, and I think we are in need of that at this point.

Chairman Stokes. Your comments to me were brought to the attention of Mr. Blakey today and he is going to follow through with that.

Mr. Blakey. There are a number of dramatic developments that are occuring day by day, and I am finding it a problem being brief, but I have obviously no problem with keeping you people up to date and we can certainly do that within the next week.

Chairman Stokes. There being nothing further at thistime, the meeting is adjourned subject to the call of the chair.

Whereupon at 4:55, the committee adjourned subject to the call of the Chair.



23

24